

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

YONI ALBERTO BARAHONA-SALES, #17688-075 PETITIONER

vs. CIVIL ACTION NO. 3:16-cv-260-WHB-JCG

UNKNOWN MARTIN, Warden RESPONDENT

consolidated with

YONI ALBERTO BARAHONA-SALES, #17688-075 PETITIONER

vs. CIVIL ACTION NO. 3:17-cv-439-WHB-JCG

UNKNOWN MARTIN, Warden RESPONDENT

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation ("R and R") of United States Magistrate Judge John C. Gargiulo. After considering the R and R¹, the other pleadings in this case, as well as relevant authorities, the Court finds the R and R should be adopted in its entirety.

I. Discussion

In 2012, Yoni Alberto Barahona-Sales ("Barahona-Sales") was convicted of illegal reentry into the United States by a previously deported felon in violation of 8 U.S.C. §§ 1326(a) and (b)(2), and

¹ The parties were required to file objections to the R and R on or before April 30, 2018. No objections were filed.

was sentenced to a 96-month term of imprisonment.² In 2016, and presumably before exhausting his administrative remedies, Barahona-Sales filed a Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("2241 Petition") in this Court challenging the manner in which his federal sentence was being executed. Specifically, Barahona-Sales argued that the Bureau of Prisons ("BOP") should have given him credit toward his federal sentence based on (1) the time he had served on a state court conviction, and (2) the effect of the federal detainer on his state court sentence. In 2017, after exhausting his administrative remedies, Barahona-Sales filed a second 2241 Petition that raises the same claims/arguments as were raised in his first 2241 Petition. The two 2241 Petitions were later consolidated. See Civil Action No. 3:16-cv-260, Order [Docket No. 14].

The consolidated action came before United States Magistrate Judge John C. Gargiulo who entered a R and R recommending that the 2241 Petitions be denied. See R and R [Docket No. 16]. In his R and R, Judge Gargiulo first found that Barahona-Sales was not entitled to federal credit based on his state sentence-related incarceration because the state court and federal court sentences had been ordered to run consecutively, and the time Barahona-Sales

² Barahona-Sales was sentenced in the United States District Court for the Middle District of Tennessee, and is currently serving his federal sentence at the Federal Correctional Complex in Yazoo City, Mississippi.

spent in pre-trial federal detention had been credited to his state court sentence. Id. 5-6. Second, Judge Gargiulo found (1) the BOP had given fair treatment to Barahona-Sales's request for *nunc pro tunc* designation, (2) there were no grounds for altering the decision of the BOP with respect to Barahona-Sales's *nunc pro tunc* request, and (3) Barahona-Sales was not entitled to *nunc pro tunc* credit because his state sentence had been imposed prior to his federal sentence. Id. 6-8. Last, Judge Gargiulo found that Barahona-Sales was not entitled to credit toward his federal sentence based on the placement of the federal detainer because there had been no showing that that detainer had affected the manner in which his state court sentence had been served. Id. at 7-8. Based on these findings, Judge Gargiulo recommended that Barahona-Sales's 2241 Petitions be denied. Id. at 8.

The Court has reviewed the R and R, to which no objections were filed, as well as the Docket and other pleadings in this case. After review, the Court agrees that Barahona-Sales's 2241 Petitions should be denied for the reasons stated by Judge Gargiulo. Accordingly, the Court will adopt Judge Gargiulo's R and R recommending the denial of Barahona-Sales's 2241 Petitions and the dismissal of this consolidated action.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the April 11, 2018, Report and Recommendation of United States Magistrate Judge John C. Gargiulo

[Docket No. 16], is hereby adopted as the ruling of this Court. A Final Judgment dismissing this case shall be entered this day.

IT IS FURTHER ORDERED that the Clerk of Court is hereby directed to file this Opinion and Order and the following Final Judgment in both cases of this consolidated action.

SO ORDERED this the 11th day of June, 2018.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE